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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

----- In the Matter of ----- )  
 )  
PUBLIC UTILITIES COMMISSION ) DOCKET NO. 05-0002  
 )  
Instituting a Proceeding to Investigate the )  
Issues and Requirements Raised by, and )  
Contained in, Hawaii Revised Statutes )  
486H, as Amended )  
\_\_\_\_\_ )

SHELL OIL COMPANY'S MOTION FOR RECONSIDERATION

EXHIBIT "A"

DECLARATION OF COUNSEL

AND

CERTIFICATE OF SERVICE

PUBLIC UTILITIES  
COMMISSION

2005 AUG 15 P 4: 26

FILED

KOBAYASHI SUGITA & GODA

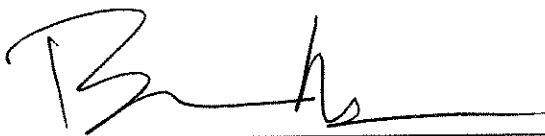
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SHELL OIL COMPANY'S MOTION FOR RECONSIDERATION

Comes now Shell Oil Company ("Shell"), by and through its attorneys, attorneys, Kobayashi, Sugita & Goda, and respectfully moves the honorable Public Utilities Commission of the State of Hawaii ("Commission" or "PUC") to reconsider and modify its Decision and Order No. 21952 filed herein on August 1, 2005 ("Order No. 21952").

This Motion is made pursuant to sections 6-61-41, 6-61-137 and 6-61-138 of the Hawaii Administrative Rules ("H.A.R."), Rules of Practice and Procedure Before the Public Utilities Commission ("Rules"), and is supported by the Memorandum in Support attached hereto, Exhibit and Declaration attached thereto, and the records and files herein which are incorporated herein by this reference.

DATED: Honolulu, Hawaii August 15, 2005.

A handwritten signature in black ink, appearing to be "Clifford K. Higa", written over a horizontal line.

CLIFFORD K. HIGA  
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Attorneys for SHELL OIL COMPANY

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**MEMORANDUM IN SUPPORT**

**I. INTRODUCTION**

What the Commission has done here is fundamentally wrong, and in violation of Hawaii law.

The PUC came armed with a mandate to study a proposed piece of legislation that had so much opposition during its legislative process, the Legislature decided it could not implement the specific components and assigned the task to the proper state agency with the expertise to handle the inquiry – the PUC. It also generously funded this exercise because it knew that the PUC would have to retain the best experts in the industry to provide professional and expert opinion on the critical matters to be investigated herein.

The PUC took this clear mandate and gave itself two duties: First, to affirmatively investigate the proposed legislation and determine its level of appropriateness. Second, if the results of the investigation were that the existing standards were not appropriate, then to design and implement more appropriate measures – with the help of its retained expert.

Very early on in this proceeding, it became clear that the existing Haw. Rev. Stat. § 486H measures were *not* appropriate and could not serve as the basis for the final formula to be adopted. As a result, the balance of this proceeding (since April 15<sup>th</sup>) has been nearly solely focused on discussing, vetting, and studying the seemingly better alternative proposed by the PUC's expert.

Through this process, however, the parties, the PUC, and the public have learned that ICF's recommendations are also too flawed to be adopted.

Given this, the PUC now believes it may simply adopt the very standard that it was urged by the Legislature to change and be done with it. Not so.

That a proposed alternative - offered to cure a problem - turns out to be equally flawed, does not cure the defects of the original problem. That this tenant is true goes without saying; but this Commission's ruling in Order No. 21952, seeks to do exactly that. By adopting the existing Haw. Rev. Stat. § 486H-13 prices and factors despite its known flaws, the Commission has now made a legal determination that these provisions are "appropriate," with no evidentiary support in the record. Worse yet, the only evidence in the record confirms that that these provisions are not appropriate and cannot be adopted.

For these and other reasons which are presented in depth below, Shell respectfully submits that Order No. 21952 is in contravention of Hawaii law, and that this Commission should promptly reconsider the positions taken therein.

## II. DISCUSSION

HAR § 6-61-137 provides as follows:

A motion seeking any change in a decision, order, or requirement of the commission should clearly specify whether the prayer is for reconsideration, rehearing, further hearing, or modification, suspension, vacation, or a combination thereof. The motion shall be filed within ten days after the decision or order is served upon the party, *setting forth specifically the grounds on which the movant considers the decision or order unreasonable, unlawful, or erroneous.*

Haw. Admin. R. 6-61-137 (emphasis added). In *In re Kukio Utility Co., LLC*, 2003 WL 22966157, Hawaii P.U.C., Nov. 26, 2003 (No. 01-0433, 20688, ID 138204), the Commission explained that: “[t]he standard for granting a motion for reconsideration is established in HAR § 6-61-137, which provides that a movant must set forth specific grounds on which the movant considers the decision or order to be unreasonable, unlawful, or erroneous.” *Id.* at 3. The Commission applied this standard in granting Kukio’s motion for reconsideration. *Id.*

Shell respectfully submits that Order No. 21952 is unreasonable, unlawful and erroneous insofar as Order No. 21952 contravenes established Hawaii law. Therefore, Order No. 21952 should be immediately reconsidered by the Commission.

### A. **This Commission May Properly Reconsider The Issuance Of Order No. 21952**

Order No. 21952 has been properly made a subject of the present Motion for Reconsideration. The present case, Docket No. 05-0002, qualifies as a “contested case” under HRS § 91-1. “Contested case” is defined as follows:

(5) "Contested case" means a *proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing.*

Haw. Rev. Stat. § 91-1 (emphasis added). Thus, a "contested case" is:

- (1) an agency hearing required by law that
- (2) determines the rights, duties, or privileges of specific parties.

*Pele Defense Fund v. Puna Geothermal Venture*, 77 Hawaii 64, 881 P.2d 1210 (Hawaii 1994). A "contested case" need not be a formal adjudication. Rather, "a public hearing, conducted pursuant to public notice," has been deemed "a 'contested case' within the meaning of HRS § 91- 1." See *Mahuiki v. Planning Com'n*, 65 Haw. 506, 654 P.2d 874 (Haw. 1982) quoting *In re Application of Hawaiian Electric Co.*, 56 Haw. 260, 264, 535 P.2d 1102, 1105 (Haw. 1975); see also *East Diamond Head Association v. Zoning Board of Appeals*, 52 Haw. 518, 524, 479 P.2d 796, 799 (Haw. 1971).

The key factor in a "contested case" is that the agency hearing must be "required by law." See *Bush v. Hawaiian Homes Commission et al.*, 76 Haw. 128, 870 P.2d 1272 (Haw. 1994). "Required by law" includes "a statutory, rule-based, or constitutional mandate for a hearing". *Id.* For instance, in *Pele Defense Fund v. Puna Geothermal Venture*, the Hawaii Supreme Court held that the agency hearing at issue was required by law because of Constitutional due process rights. The Court reasoned as follows:

Constitutional due process protections mandate a hearing whenever the claimant seeks to protect a "*property interest*," in other words, a benefit to which the claimant is legitimately entitled. *Id.* at 136, 870 P.2d at 1280 (citing *Aguiar v. Hawaii Housing Authority*, 55 Haw. 478, 495, 522 P.2d 1255, 1267 (1974), and *Sandy Beach Defense Fund v. City Council*, 70 Haw. 361, 377, 773 P.2d 250, 260 (1989)). The dispositive issue, therefore, is whether "[PGV's] interest in [obtaining an ATC permit] ... constitutes a 'property' interest such that the

agency hearing was a 'contested case' pursuant to HRS § 91-14(a)." *Bush*, 76 Hawai'i at 136, 870 P.2d at 1280.

PGV itself asserts that "a [contested case] is required when property interests, such as PGV's use of its project site, are implicated." PGV is correct with respect to the agency's denial of a proposed property use. *See supra* note 8 (quoting HRS § 342-6(c)). Furthermore, as a matter of constitutional due process, an agency hearing is also required where the issuance of a permit implicating an applicant's property rights adversely affects the constitutionally protected rights of other interested persons who have followed the agency's rules governing participation in contested cases. . . .

The *public hearings* held by the DOH were proceedings in which PGV "sought to have the legal rights, duties or privileges of land in which it held an interest declared over the objections of other landowners and residents of" *Puna. Mahuiki v. Planning Comm'n*, 65 Haw. 506, 513, 654 P.2d 874, 879 (1982) (concluding that this characteristic is an "obvious" element of a contested case hearing); *see also Town v. Land Use Comm'n*, 55 Haw. 538, 548, 524 P.2d 84, 91 (1974) (holding that adjacent property owner has a property interest in the amendment of a district boundary). Thus, the DOH hearings were "contested case[s]" because they were "proceeding[s] in which the legal rights, duties or privileges of specific parties were required by law to be determined after an opportunity for agency hearing." HRS § 91-1(5).

*Pele Defense Fund*, 77 Hawaii at 68, 881 P.2d at 1214 (emphasis added). A broad range of property qualifies as "property interests" invoking Constitutional procedural due process protections. *See e.g. Brown v. Thompson*, 91 Haw. 1, 979 P.2d 586 (Haw. 1999), *cert. denied*, 528 U.S. 1010 (1999) (vessel, mooring and permits were protected "property interests"); *Kernan v. Tanaka*, 75 Haw. 1, 856 P.2d 1207 (Haw. 1993) ("A driver's license is a constitutionally protected interest and due process must be provided before one can be deprived of his or her license."); *Aguiar v. Hawaii Housing Auth.*, 55 Haw. 478, 522 P.2d 1255 (Haw. 1974) (public housing tenants interest in low-cost housing was protected "property interest"); *Silver v. Castle Memorial Hospital*, 53 Haw. 563, 497 P.2d 564 (Haw.

1972) (doctor's interest in his continued practice of medicine at federally-funded hospital was protected "property interest"); *Mortensen v. Bd. Of Trustees of Employees' Ret. Sys.*, 52 Haw. 212 (Haw. 1970) (accidental disability retirement benefits was protected "property interest"); *Harris v. County of Riverside*, 904 F.2d 1990 (9<sup>th</sup> Cir. (Cal.) 1990) (commercial use of land and rezoning application fees were protected "property interests"); *Stypmann v. City & Cty. Of San Francisco*, 557 F.2d 1338, 1342 (9<sup>th</sup> Cir. (Cal.) 1977) ("[l]oss of use and enjoyment of a car deprives the owner of a property interest that may be taken from him only in accordance with the Due Process Clause").

In the present case, the purpose of the investigation in Docket No. 05-0002 was to examine the issues and requirements raised by, and contained in, Haw. Rev. Stat. Chapter 486H including an examination of the "effect, impact and appropriateness" of: (1) the baseline price in Haw. Rev. Stat. § 486H-13(c); (2) the location adjustment factor in Haw. Rev. Stat. § 486H-13(d); (3) the marketing margin factor in Haw. Rev. Stat. § 486H-13(e); (4) the mid-grade adjustment factor in Haw. Rev. Stat. § 486H-13(f); (5) the premium adjustment factor in Haw. Rev. Stat. 486H-13(g); (6) the information required under Haw. Rev. Stat. § 486G-13(h); (7) the zone price adjustments under Haw. Rev. Stat. § 486H-13(i); (8) the information required under Haw. Rev. Stat. § 486-13(j); and (9) adjustment necessary to establish maximum pre-tax wholesale gasoline prices under Haw. Rev. Stat. § 486H-16(c). The investigation was necessary because the legislature tasked the Commission to make such determinations and to make changes to the above prices/factors.

As part of its investigation, the Commission made Tesoro, Chevron and the Consumer Advocate parties, granted Shell and HPMAs' motions to intervene, retained



ICF Consulting as its expert, conducted discovery through information requests with the parties, held meetings with the parties, and held public hearings in each of the eight (8) zones designated by Haw. Rev. Stat. Chapter 486H. Order 21952 establishing the requirements of Haw. Rev. Stat. § 486H-13 is the result of this investigation.

The Commission's extensive investigation was "required by law" (required by procedural due process rights) because it involved multiple protected "property interests" including but not limited to the following:

First, the present contested case involves the property interests of gasoline marketers (e.g. Chevron, Tesoro, & Shell) including their respective real property, refining facilities, storage terminals, service stations and other investments. The hearing was required by Constitutional due process because the purpose of the underlying Docket to determine the maximum price of gasoline pursuant to Haw. Rev. Stat. Chapter 486H. Consequently, through this contested case, the Commission intended to set the maximum price of gasoline and could indeed set the maximum price of gasoline so low that it would deprive gasoline marketers of all commercial use of their property. Thus, a hearing was required by Constitutional due process. In addition, as it currently stands, the Commission has deprived gasoline marketers of their investment backed expectations by limiting returns on their investments/property through the issuance of Order 21952.

Second, the present contested case involves the property interests of HPMA's jobbers. These property interests include the commercial use of their property including their gasoline delivery trucks. There is no question that the Constitutionally protected property interests of HPMA's jobbers were at stake given the known risk that many of them will be put out of business due to gasoline price caps determined by the Commission. *See*

HPMA Statement, at 2 (“HPMA has grave concerns as to the dilemma in which the jobber industry finds itself. If the PUC fails to adopt regulations, the jobbers will likely suffer harm because the statutory-calculated price caps ignore the jobber segment altogether and would allow the refiners and suppliers to set prices at the highest wholesale rate possible—leaving no available margin for jobbers”). In fact, Order 21952 completely fails to address the grave concerns of HPMA’s jobbers who now face total deprivation of the commercial use of their property because Order 21952 does not require that such jobbers recover even their costs of distribution. Order 21952 raises the “zone” cap number to allow for the “highest actual transportation costs” in an “*attempt* to minimize adverse supply impacts to rural areas”. However, this “attempt” does not insure *that jobbers* will be able to purchase gasoline products at a cap price that will enable them to recover their costs of distribution. For example, under Order 21952, Kauai’s zone price adjustment is 13.6 cpg regardless of whether that gasoline is sold in Lihue or Princeville. Consequently, nothing prevents gasoline marketers from charging (jobbers and others) the full amount of the price cap including the 13.6 cpg zone price adjustment.<sup>1</sup> If this happens, Order 21952 deprives jobbers of all commercial use of their property and their investment backed expectations because they will be unable to conduct their businesses.

Finally, the present contested case involves the property interests of rural service station owners. Some of these service station owners testified against the gasoline caps in the public hearings held by the Commission. *See* Order 21952, at 27-32. As recognized in Order 21952, “there is a high probability of service station closures in some areas due to supply cost issues, and there is a higher risk that remote locations might lose

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<sup>1</sup> *See* Section II, D. 1. *infra* regarding pricing to the cap

service”. See Order 21952, at 32. The forced closure of rural service stations resulting from Order 21952 is a deprivation of commercial use of the property of these service station owners.

Accordingly, Docket No. 05-0002, qualifies as a “contested case” under HRS § 91-1 because it was an “agency hearing” that was “required by law” affecting the rights, duties and privileges of the parties in the present case.

**B. Order No. 21952 Does Not Meet The Requirements Of Hawaii Law Because It Is Not Supported By This Evidentiary Record Of This Case**

**1. The Legislative History and Act 242 confirms that the Legislature Never Intended Haw. Rev. Stat. § 486H-13 To Be Implemented Without Further Specific Investigation by the PUC As To Its Appropriateness**

The 2004 Legislature never intended its amendments to Haw. Rev. Stat. § 486H-13 to be implemented without first, independently investigating the reasonableness and appropriateness of the adjustment factors prescribed therein.

Indeed, the 2004 amendments to Haw. Rev. Stat. § 486H-13 came with significant opposition from both the public and private sector. DBEDT, the Chamber of Commerce of Hawaii, WSPA, Tesoro Hawaii Corporation, Aloha Petroleum, Diamond Head Petroleum, Inc., Maui Petroleum, Inc., Hawaii Petroleum, Inc., Garlow Petroleum, Inc., Kahala Shell Auto Care, Inc., West 1 Properties, LLC, Hawaii Island Portuguese Chamber of Commerce, Duke’s Management Corporation, Kawamata Brothers, Ltd., Sure Save Supermarket, Ltd., and numerous other petroleum retailers, jobbers, and concerned individuals, all testified against implementation of the prescribed measures.

See House Standing Committee Report No. 1184-04 (2004); Senate Standing Committee Report No. 2429 (2004), Shell Position Statement at pp. 30-31.

Because of this strong and credible opposition, the 2004 Legislature knew it could not simply proceed with implementing the law as passed. Instead, it designated the appropriate governmental agency with the most expertise in the area – in this case, the PUC – to specifically determine the feasibility and appropriateness of the proposed measures, and to offer more appropriate standards if the results of its investigation warranted such action. *Id.*

Act 242 declared “that Hawaii, being a chain of islands with different demographics, populations, terminal storage facilities, and economies of scale, contains different sub-markets and that it is necessary to identify these sub-markets by zones. Accordingly, the public utilities commission should have the authority to make any necessary adjustments to the maximum pre-tax wholesale gasoline prices in recognition of any unique attributes of these sub-markets that may have an impact on the prices.” See Act 242 at Section 1. Act 242 also appropriated \$500,000 “to carry out the purposes of chapter 486H and this Act, including the hiring of necessary staff and the retaining of professional consultants” to “be expended by the public utilities commission” to carry out their mandate. *Id.* at Section 8.

In other words, the 2004 Legislature knew that the 2004 amendments were not the last word on what the provisions of the gas cap law should be. The 2004 Legislature therefore took the prudent action of requiring the PUC to conduct an independent examination, and to retain a professional consultant if necessary, to make a determination

of whether the proposed provisions of Haw. Rev. Stat. § 486H-13 are appropriate. This determination was to be based upon a professional and evidentiary record to be developed in an investigative docket.

**2. The PUC's Mandate Was Twofold – To Determine The Appropriateness Of The Specific Measures Proposed By Way Of Act 242 In Haw. Rev. Stat. § 486H-13 And To Explore More Appropriate Alternatives**

The PUC followed this clear legislative mandate and initiated this docket to “examine the issues and requirements raised by, and contained in, HRS Chapter 486H, particularly Act 242.” *See* Order No. 21525 entered herein, which initiated the present proceeding.

Most telling is the PUC's own description of what this task was to entail. The PUC expressly confirmed that their duties were *twofold*: First, to investigate and develop an evidentiary record to determine the “effect, impact, and appropriateness” of the proposed 2004 amendments to Haw. Rev. Stat. § 486H-13; and secondly, to “examine[] options as to a more appropriate” formula – should the evidence developed in this proceeding indicate that the existing 2004 amendments were “not appropriate:”

Through this docket, the commission intends to examine the issues and requirements raised by, and contained in, HRS Chapter 486H, particularly Act 242. These issues and requirements include, but are not limited to:

1. *Examining the effect, impact, and appropriateness of the baseline price as defined in HRS § 486H-13(c), as amended, and examining options as to a more appropriate baseline or a more appropriate reporting service, if any.*
2. *Examining the effect, impact, and appropriateness of the location adjustment factor established by HRS § 486H-13(d); as amended, at \$.04 per gallon, and*

examining options as to a more appropriate location adjustment factor, if any.

3. *Examining the effect, impact, and appropriateness of the marketing margin factor established by HRS § 486H-13 (e), as amended, at \$.18 per gallon, and* examining options as to a more appropriate marketing margin factor, if any.

4. *Examining the effect, impact, and appropriateness of the mid-grade adjustment factor established in HRS § 486H-13(f), as amended, at \$.05 per gallon, and* examining options as to a more appropriate mid-grade adjustment factor, if any.

5. *Examining the effect, impact, and appropriateness of the premium adjustment factor established by HRS § 486H-13(g), as amended, at \$.09 per gallon, and* examining options as to a more appropriate premium adjustment factor, if any.

See Order No. 21525 at pp. 2-3 (emphasis added).

The PUC's duties were *not* simply to examine other alternatives to those specific measures proposed by Act 242. They were required to specifically conduct an analysis, develop an evidentiary record, and make a determination – based on that evidentiary record – as to whether the Act 242 measures codified in Haw. Rev. Stat. § 486H-13 were appropriate or not.

3. **Order No. 21952 Only Does Half Of What It Was Supposed To Do**

By its decision in Order No. 21952, the PUC has simply adopted the following: “(a) the HRS Chapter 486H baseline price and location adjustment factor established by the Legislature; (b) the HRS Chapter 486H marketing margin factor established by the Legislature; [and] (c) the HRS Chapter 486H Premium and Midgrade adjustments established by the Legislature”. The only reasoning provided by the PUC is that

“[a]lthough the commission has the discretion to use ‘more appropriate’ factors or ‘otherwise determine’ various factors under HRS § 486H-13, to-date the commission has not found sufficient justification to deviate from the factors established by the Legislature in HRS § 486H-13(b)-(g).” *Id.* at pp. 2 – 3. This is unsupported and unacceptable.

**a. Baseline Price And Location Adjustment Factor**

As to the proper baseline price and location adjustment factor to be implemented, the PUC ruled:

The commission concludes that it should initially use the HRS Chapter 486H baseline price and location adjustment factor to implement HRS Chapter 486H rather than ICF’s recommended import parity price for a number of reasons.

Order No. 21952 at p. 16.

However, in the ensuing 4 pages of the Order, the PUC only explains why ICF’s recommended factors are not appropriate. No discussion as to the reasonableness of the Act 242 measures is provided. *See Id.* at pp. 16 – 20. Rather, the PUC simply offers that “based on the foregoing, the commission concludes that it should initially use the HRS Chapter 486H baseline price and location adjustment factor to implement HRS Chapter 486H rather than ICF’s recommended factors.” *Id.* at 20.

The PUC was expressly required to examine the “effect, impact, and appropriateness” of the baseline price as defined in Haw. Rev. Stat. § 486H-13(c) and the location adjustment factor of \$.04 per gallon established by Haw. Rev. Stat. § 486H-13(d). By its decision to adopt these measures, the PUC has in-effect made an affirmative finding that these measures are “appropriate.” This finding is not supported in Order No 21952 and is not supported by the record in this case.

**b. Marketing Margin Factor**

As to the proper marketing margin factor to be utilized, the PUC ruled:

Accordingly, the commission concludes that it should initially use the HRS Chapter 486H method of adding eighteen (18) cpg for the marketing margin to implement HRS Chapter 486H rather than ICF's recommended methodology.

Order No. 21952 at p. 21.

However, in the ensuing 5 pages of the Order, the PUC only provides substantive reasons why ICF's recommended factor was not appropriate. No discussion is included to support its decision adopting the Act 242 marketing margin factor of 18 cpg. *See Id.* at pp. 21-25.

The PUC was expressly required to examine the "effect, impact, and appropriateness" of the marketing margin factor established by Haw. Rev. Stat. § 486H-13(e) at \$.18 per gallon. By its ruling on this specific point, the PUC has in-effect made an affirmative finding that the existing marketing margin factor of \$.18 per gallon is "appropriate." This finding is not supported in Order No 21952 and is not supported by the record in this case.

**c. Premium And Midgrade Adjustment Factors**

As to the proper premium and midgrade adjustment factors to be utilized, the PUC ruled that it should "utilize the factors in HRS §§ 486H-13(f) and (g), for Midgrade and Premium adjustments, respectively to initially implement HRS Chapter 486H."

Order No. 21952 at p. 25.



Again, in this ruling, the PUC only provides substantive reasons why ICF's recommended factors were not appropriate. No discussion is offered as to the reasonableness of adopting a premium adjustment factor of \$.09 per gallon and a midgrade adjustment factor of \$.05 per gallon. *See Id.* at pp. 25-26.

The PUC was expressly required to examine the "effect, impact, and appropriateness" of the premium adjustment factor established by Haw. Rev. Stat. § 486H-13(f) of \$.09 per gallon and the midgrade adjustment factor established by Haw. Rev. Stat. § 486H-13(g) of \$.05 per gallon. By its rulings on these specific points, the PUC has in-effect made an affirmative finding that the Act 242 premium and midgrade adjustment factors are "appropriate." This finding is not supported in Order No 21952 and is not supported by the record in this case.

**4. Order No. 21852 Violates Hawaii Law Insofar As It Is Not Based Upon The Evidentiary Record Developed In This Proceeding**

The PUC is not at liberty to make a determination in this case based upon reasons or rationale outside the scope of this investigative proceeding. Here, however, its de-facto findings and conclusions that the existing provisions of Haw. Rev. Stat. § 486H-13 are "appropriate" are not supported by the evidentiary record in this case. Consequently, these unsupported rulings and the resulting Order must be vacated.

As discussed above, the Commission's investigation was a "contested case" within the definition of Haw. Rev. Stat. Chapter 91. Haw. Rev. Stat. Chapter 91 requires that:

Every decision and order adverse to a party to the proceeding, rendered by an agency in a contested case,

shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law. If any party to the proceeding has filed proposed findings of fact, the agency shall incorporate in its decision a ruling upon each proposed finding so presented. The agency shall notify the parties to the proceeding by delivering or mailing a certified copy of the decision and order and accompanying findings and conclusions within a reasonable time to each party or to the party's attorney of record.

Haw. Rev. Stat. § 91-12 (Supp 2005).

This statute requires “separate findings of fact and conclusions of law” that are “reasonably clear.” *See Survivors of Freitas v. Pacific Contractors Co.*, 1 Haw. App. 77, 84-85, 613 P.2d 927, 932 (Ct. App. 1980) (findings and rulings must be “reasonably clear” so that the parties are not “left to guess [the precise finding of the agency], with respect to any material question of fact, or to any group of minor matters that have cumulative significance”); *In re Term. Transp., Inc.*, 54 Haw. 134, 504 P.2d 1214 (Haw. 1972) (holding that PUC violated Haw. Rev. Stat. § 91-12 because it failed to rule on each of the proposed findings); *In re Hawaiian Tel. Co.*, 54 Haw. 663, 513 P.2d 1376 (1973) (Where PUC “failed to make its findings reasonably clear” Court explained that “[t]hese provisions [of Haw. Rev. Stat. § 91-12] may not be disregarded. A fundamental reason for the enactment of the Hawaii Administrative Procedure Act was to insure fairness and impartiality in administrative proceedings. Fairness and impartiality cannot be insured when an administrative agency such as the Public Utilities Commission consistently refuses to abide the clear mandates of the statute”); *In re Hawaii Elec. Light Co.*, 60 Haw. 625, 641-642, 594 P.2d 612, 623 (1979) (“The requirement that the Commission set out findings of fact and conclusions of law is no mere technical or perfunctory matter. The purpose of the statutory requirement that the agency set forth

separately its findings of fact and conclusions of law is to assure reasoned decision making by the agency and enable judicial review of agency decisions.”).

In *Application of Kauai Elec. Division of Citizens Utilities*, 60 Haw. 166, 590 P.2d 524 (Haw. 1978), the Court held that the Commission violated Haw. Rev. Stat. § 91-12 because it failed to make findings of fact to support a finding that an interim relief order was “necessary” under Haw. Rev. Stat. § 269-16. The Court reasoned that pursuant to the rate-making requirements of Haw. Rev. Stat. § 269-16, the Commission “do all things . . . which are necessary” in the exercise of its rate-making power. *Id.* at 184-185, 590 P.2d at 537. Thus, the Court remanded the matter for further findings.

The present case is analogous to the Haw. Rev. Stat. § 269-16 rate-making situation in *Application of Kauai Elec. Division of Citizens Utilities*. Here, Haw. Rev. Stat. Chapter 486H and Order No. 21525 required the Commission to examine the “effect, impact, and appropriateness of” various price caps and adjustment factors required by Haw. Rev. Stat. Chapter 486H. To that end, the Commission was required to determine and make necessary findings as to the “effect, impact, and appropriateness of” various price caps and adjustment factors required by Haw. Rev. Stat. Chapter 486H based on the evidentiary record. *See Application of Kauai Elec. Division of Citizens Utilities*, 60 Haw. at 184-185, 590 P.2d at 537; *see also* Haw. Rev. Stat. § 269-16.

The Commission failed to issue “reasonably clear” “separate findings of fact and conclusions of law”. *See* Order 21952. Rather, Shell submits that key “findings of fact and conclusions of law” are conspicuously absent from Order 21952. More specifically, the Commission failed to “make findings of fact to support a finding that” the price caps and adjustment factors in Order 21952 are “appropriate.” In fact, the only rationale the

Commission gave in Order 21952 was that ICF's recommendations were admittedly inappropriate. Accordingly, the Commission violated Haw. Rev. Stat. § 91-12.

By adopting the existing Haw. Rev. Stat. § 486H-13 factors (in view of what Order No. 21525 at pp. 2-4 expressly orders the PUC's scope of inquiry to be in this investigative docket), the PUC made a de-facto finding and conclusion that said factors were "appropriate." However, these determinations cannot be supported under Hawaii law.

Under Haw. Rev. Stat. § 91-9(g), "[n]o matters outside the record shall be considered by the agency in making its decision except as provided herein." Haw. Rev. Stat. § 91-9(g). For the purposes of agency decisions, the record includes:

- (1) All pleadings, motions, intermediate rulings;
- (2) Evidence received or considered, including oral testimony, exhibits, and a statement of matters officially noticed;
- (3) Offers of proof and rulings thereon;
- (4) Proposed findings and exceptions;
- (5) Report of the officer who presided at the hearing;
- (6) Staff memoranda submitted to members of the agency in connection with their consideration of the case.

Haw. Rev. Stat. § 91-9(e); *see e.g. Mauna Kea Power Co. v. Bd. Of Land & Nt. Res.*, 76 Haw. 259, 874 P.2d 1084 (Haw. 1994) (the administrative agency cannot consult sources outside the record). Also, on appeal, "[a]n agency's findings" will be upheld "if supported by reliable, probative and substantial evidence [in the record.]" *Application of Hawaii Elec. Light Co., Inc.*, 60 Haw. at 630, 594 P.2d at 617 (citations omitted).

In the present case, there is not a single shred of evidence established in this record to support the PUC's determination that the existing Haw. Rev. Stat. § 486H-13 standards are "appropriate." To the contrary, the only evidence adduced as to the proposed Act 242 adjustment factors indisputably show that these measures were entirely

inappropriate. Indeed, the PUC's retained expert opined, time after time, that the specific measures adopted by the PUC were not appropriate and unfit to be implemented.

ICF specifically rejected Haw. Rev. Stat. § 486H-13(c) sources for establishing a baseline price as "fundamentally not a realistic assessment of competitive alternatives." *See* ICF's Response to SHELL-IR-18. Moreover the PUC's expert also deemed that the proposed location adjustment factor of \$.04 in Haw. Rev. Stat. § 486H-13(d) "is not an appropriate factor to be utilized" as well. *See* ICF's Response to SHELL-IR-23.

As to the proposed marketing margins, ICF noted that Haw. Rev. Stat. § 486H-13(e) is not "appropriate" insofar as "1) it assumes only one class of trade exists for wholesale sales, and does not clearly identify which class of trade applies, and 2) it assumes that marketing margins are fixed, where in fact . . . marketing margins can and do vary over time." *See* ICF's Response to SHELL-IR-49.

The same type of evidence was adduced as the premium and midgrade adjustment factors of Haw. Rev. Stat. §§ 486H-13(f) and (g). The PUC's expert specifically rejected these existing standards, warning that the PUC needed to utilize numbers that were "market sensitive" and confirming that in their professional opinion, these proposed standards were not "appropriate." *See* ICF's Response to SHELL-IR-58; ICF's Response to SHELL-IR-59.

The PUC was tasked to make an affirmative investigation as to the appropriateness of the Act 242 adjustment factors, but clearly did not do so. Order No. 21952 does not even attempt to explain or address the mountain of evidence confirming that Haw. Rev. Stat. § 486H-13 is unfit for implementation.

Further, as the only evidence in this administrative record relating to the Act 242 adjustment factors showed that these measures were *not* appropriate, the PUC's naked endorsement of these factors, without a single piece of evidence in the record – or any substantive basis for establishing reasonableness - stands as an arbitrary ruling in clear violation of Hawaii law. Indeed, the entire 83-page ICF Report, prepared specifically for the PUC to serve as an expert's guide for its ruling in this case, at a cost of hundreds of thousands of dollars to the tax payers of the State of Hawaii, stands as a ringing endorsement for *rejecting – not accepting* – the flawed provisions of Haw. Rev. Stat. § 486H-13.

That the PUC would now turn 180 degrees and make a finding of appropriateness based on absolutely no evidence, argument, or opinion, with a record that *only* supports a finding of unreasonableness, is simply unfathomable and contrary to the settled law of this State.

Given these factors, it is clear that Order No. 21952 is “unreasonable, unlawful” and “erroneous” and immediate reconsideration is appropriate. *See* Haw. Admin. R. § 6-61-137.

**C. Order No. 21952 Does Not Meet The Requirements Of Hawaii Law As It Is Incomplete and Too Unclear**

Act 242 changed the baseline for determining the maximum wholesale pre-tax gasoline price by using the average spot prices of regular unleaded gasoline in the markets of New York Harbor, US Gulf Coast, and Los Angeles. The act further defined the source for this data to be OPIS. *See* Haw. Rev. Stat. § 486H-13(c)

While the language in this legislation sounds specific and definitive, it is completely insufficient to calculate the gasoline cap as envisioned by the State. As a result, Order No. 21952 is incomplete and inadequate to implement the terms of the gas cap legislation. Shell submits the PUC must reconsider its position, and at a minimum, clarify the Order to clearly reflect the intent of the language and specify the method to calculate the weekly cap formula.

#### **1. Fuel Specifications Are Unclear**

Haw. Rev. Stat. § 486H-13 is specific regarding the spot gasoline markets. It requires that the cap be calculated using New York, Gulf Coast and Los Angeles markets. However, OPIS provides quotations for different blends of fuel. For example, in New York, OPIS provides a quotation for Conventional regular gasoline, Oxygenated regular gasoline, and Reformulated regular gasoline.

Order No. 21952 is silent regarding the type gasoline should be utilized for the purpose of the gas cap formula. It could be argued that the State should utilize the Conventional quotation since it most closely matches Hawaii's gasoline specification today. However, in early 2006 this justification will no longer apply when Hawaii converts to an ethanol-blended product.

Further, it is important to consider this issue in each spot market. While the New York and Gulf markets have robust spot markets for conventional gasoline, the Los Angeles market is more focused on California's special requirements (Carbob). OPIS does provide a Los Angeles quotation for a Conventional product, but it is not the predominant commodity in this area. In fact, the Los Angeles market includes quotations for Conventional, Carbob, CBG (for Arizona), and AZRBOB (for Arizona). While

common sense would probably preclude the use of an Arizona blend for the purpose of calculating the Hawaii cap, it is not so easy to select from the remaining alternatives.

At a minimum, before any implementation can occur, the PUC must review these issues and determine the most appropriate components to calculate the weekly gas cap. This review should include a plan for the impending implementation as well as the upcoming switch to Ethanol.

## **2. OPIS Data Not Sufficiently Defined**

While Act 242 directed that OPIS be the source for spot market information, the law is not specific as to exactly which OPIS postings should be used.

OPIS provides multiple spot market quotations in each market every day (i.e. OPIS reports Low, High, Average, and Closing prices). Since these figures vary significantly, it is important that the PUC's Order be clear and specific regarding the calculation. Once again, common sense might call for the use of the Average or Closing prices, but it is not unreasonable for an uninformed selection to be made without completely understanding the data. Subsequent to the issuance of Order No. 21952, the PUC has advised the parties (see letter dated August 12, 2005 from PUC to parties) that the cap will be calculated using the Closing OPIS figures, but without any discussion or evaluation of appropriate of this metric.

## **3. OPIS Is Considering Changes To Their Postings**

Today, OPIS provides quotations based on gasoline product trades in the pipeline. Platts offers both a "waterborne" and "pipeline" quotation. Upon information and belief, OPIS is believed to be considering the addition of "waterborne" spot market quotations within the next 3-6 months. The differences between the two reporting agencies should cause the PUC to question whether OPIS is currently the best source for spot market



quotations. Even if OPIS is determined to be an adequate source for quotations today, the PUC should evaluate the appropriateness of “pipeline” and “waterborne” spot quotations as they relate to the cap.

Based on the issues raised above, it is clear that more evaluation is appropriate before the PUC is able to publish a clear, concise, and unambiguous order.

#### **4. OPIS Does Not Afford Transparency**

Act 242 envisions that the parties will be able to petition the PUC for adjustments to the price cap. 486-16(a) specifically states that:

A manufacturer, wholesaler, or jobber may petition the commission to adjust the maximum pre-tax wholesale price of regular unleaded, mid-grade, or premium gasoline in the event of a change in the value of the baseline price for regular unleaded gasoline, the location adjustment factor, the marketing margin factor...”

Indeed, Order 21952 even speaks to the proposed procedure to be utilized by the parties when situations occur that require a party to file a petition to obtain an adjustment from the Commission. But the Commission’s recent actions – in a rush to devise a makeshift procedure for implementing this flawed bill - effectively precludes the ability of the parties to even utilize this “safety valve” provision.

The PUC has elected to utilize OPIS data to calculate the gas cap formula. However, in its August 12<sup>th</sup> letter to the parties, the PUC now discloses that daily OPIS data for calculating the gas cap will not be provided to the public or the parties. Without an ability to evaluate and confirm the daily OPIS data, the parties will effectively be precluded from making timely, lawful, and meaningful challenges under 486-16(a)..

The uncertainty and confusion caused herein by the Order and the measures proposed to adopt this law underscores that this law has major flaws that that cannot be

ignored. The Order and its proposed plan for implementation are “unreasonable, unlawful” and “erroneous” and immediate reconsideration is appropriate. *See* Haw. Admin. R. § 6-61-137.

**D. Order No. 21952 Also Creates Practical Concerns That Are Unavoidable**

**1. The PUC’s Action Enhances The Likelihood That Prices Will Increase**

The evidence produced in this case leads to the unavoidable likelihood that gasoline prices may increase, rather than decrease, as a result of this law.

The CA has warned that “[e]xperience with other regulated regimes points to the fact that marketers will tend to set prices at the cap, even when market conditions are such that the capped price is above what a market-based price would be.” *See* CA Statement, at 14-16.

Such a scenario is also foreseeable as to the maximum zone adjustments under Order 21952. As explained by Tesoro:

The cost for movement of gasoline across zones and to the neighbor islands is a complex task that is *especially susceptible to local market conditions*. Determining the costs to service a particular zone is an impracticable exercise when one tries to apply average industry costs to a market with *variable costs service*. Applying average cost concepts means, among other things, that service providers to low volume and small delivery size areas, i.e., rural “mom and pop” retailers, would become especially vulnerable. As well, there are *non-ratable demands in terminal supply that will increase barging, trucking and terminal costs*. *Under the Oil Pollution Act of 1990, the Federal government has mandated double-hulled barges for fuel transport. Tesoro Hawaii will have to make substantial capital investments to comply with the law. However, under either HRS § 486H or the ICF Report, large scale capital improvements may not be subject to timely and reasonable recovery through wholesales of gasoline. The costs associated with long term agreements and leases for terminaling,*

*barging, and trucking would be similarly disregarded under gasoline price caps.*

\* \* \* \*

Tesoro Hawaii believes that any price cap formulation of a zone adjustment will still be flawed. The formula contemplated under the ICF Report and the unspecified adjustments under HRS § 486H-13(h) do not and cannot reflect and correlate with competitive market conditions in Hawaii.

Tesoro Statement, at 18-19. Thus, gasoline marketers must anticipate fluctuations/ increases in the transportation costs and the need for capital investments due to the fixed nature of the zone price adjustments.<sup>2</sup>

In viewing this issue hypothetically, there is more than a theoretical risk that gasoline prices will increase, rather than decrease. *See* Sean Hao, *Hawai'i gas cap may drive prices up*, Honolulu Advertiser, August 14, 2005 ("The average retail price for regular unleaded gasoline in Honolulu could jump as much as 21 cents above current prices to \$2.82 a gallon when Hawai'i's gasoline price cap takes effect Sept. 1"); B.J. Reyes, *Gas cap could boost prices: A Star-Bulletin analysis shows the new law will bring only slight changes for isle drivers*, Honolulu Star Bulletin, August 12, 2005; Rod Antone and B.J. Reyes, *Analyst skeptical of Hawaii gas cap: The oil economist says a rumor could create a fuel shortage*, Honolulu Star Bulletin, August, 14, 2005.<sup>3</sup>

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<sup>2</sup> The fixed "zone" cap numbers under Order 21952 do not account for fluctuations/increases in the gasoline marketers' costs (insurance, fuel, storage, maintenance, capital, etc.) of supplying gasoline to the neighbor islands.

<sup>3</sup> Due to the recent nature of these articles event, Shell requests that the PUC take judicial notice of them pursuant to HAR § 6-61-48 and HRS § 91-10(4).

HAR § 6-61-48 provides that: "Official notice of facts. The commission may take official notice of those matters as may be judicially noticed by the courts of the State. It may also take official notice of generally recognized technical or scientific facts within its specialized knowledge, upon notice to all parties before or during the hearing. Any party may contest the facts so noticed."

2. **The PUC's Error On Ignoring The Task Force Creates Additional Concerns**

Shell also respectfully disagrees with the Commission's position that the failure to convene the mandatory legislative Task Force does not affect its duties under the HRS ch. 486. The Commission casually dismisses the mandatory legislative Task Force in a footnote of Order 21952:

The commission is not aware of any report prepared by a legislative task force pursuant to Hawaii Session Laws 2004, Act 242 § 7. Shell argues that the legislative task force must be convened and fulfill its duties pursuant to Act 242 § 7 prior to the implementation of the Hawaii Gas Cap Law, Shell's SOP at 4-5, 26-40; however, *a plain reading of HRS § 486H-13(i) requires the commission to establish zone adjustments, independent of the duties of the task force.*

Order 21952, at 26 n.63 (emphasis added). However, this position is inconsistent with a plain reading of Act 242 which requires that the legislative task force be convened and issue its report to the 2005 legislature: Act 242 is the law of the land and the Commission cannot choose to ignore its provisions. *See Shell Position Statement*, at 26-51.

This is especially true given the problems acknowledged by the Commission which prevent the Commission from establishing a zone price adjustment that will not result in "high probability of service station closures" and "higher risk that remote locations might lose service."

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Haw. Admin. R. § 6-61-48. HRS § 91-10 (4) provides that: "Agencies may take notice of judicially recognizable facts. In addition, they may take notice of generally recognized technical or scientific facts within their specialized knowledge; but parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed." Haw. Rev. Stat. § 91-10(4).

a. **The Commission Acknowledges That There Is A “High Probability Of Service Station Closures” And “Higher Risk That Remote Locations Might Lose Service”**

In Order 21952, the Commission recognized the problem of neighbor island gas shortages. The Commission was tasked to “[e]xamin[e] the effect, impact and appropriateness” of the material aspects of Haw. Rev. Stat. Chapter 486, as amended by Act 242, including zone price adjustments. *See* Order 21525, at 2-4. In doing so, the Commission held public hearings in which it received strong testimony against price caps. This testimony indicated that the neighbor islands will be adversely affected by the price caps. The Commission quoted much of this testimony in Order 21952. *See* Order 21952, at 27-32; *see also* Shell Position Statement, at 43-49 (for additional testimony received by the Commission). Based on this testimony the Commission found as follows:

the commission is aware there is a risk that higher costs in areas on the neighbor islands and remote areas may lead to closure of service stations if the gas cap is implemented. Further, there is also a risk that if gasoline marketers in the State find that, under the proposed caps, some distribution channels do not provide an economic return, they may reduce or eliminate sales through those channels. Furthermore, in a capped price environment, a wholesale marketer supplying a DTW account may see no way to cover its costs to service the account and may cancel the supply contract. As a result, there is a *high probability of service station closures* in some areas due to supply cost issues, and there is a *higher risk that remote locations might lose service*.

Order 21952, at 31-32 (emphasis added) (footnotes omitted).<sup>4</sup>

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<sup>4</sup> It should be noted that the Commission is not prepared to deal with these problems. ICF concedes that it did not perform any analysis on the issue of the possibility of having to replace marketers or suppliers who choose to cease operations in remote rural areas on the neighbor island because of the implementation of the gas cap law as recommended in the Report. *See* ICF’s Response to SHELL-IR-78(c). Similarly,

**b. The Failure To Convene The Mandatory Legislative Task Force Prevents The Commission From Being Able To Establish Appropriate Zone Adjustments**

Despite this “high probability of service station closures” and “higher risk that remote locations might lose service,” the Commission has decided that it can still “establish zone adjustments, independent of the duties of the task force.” However, it is obvious that the failure to convene the mandatory legislative task force prevents the Commission from being able to establish workable zone adjustments. This is evident in Order 21952’s failure to establish zone price adjustments that eliminate the “high probability of service station closures” and “higher risk that remote locations might lose service.”

Order 21952 raises the “zone” cap number to allow for the “highest actual transportation costs” in an “*attempt* to minimize adverse supply impacts to rural areas.” This “attempt” fails because there are no assurances that any of this zone cap adjustment amount will be provided to jobbers. Assuming gasoline marketers price to the cap,<sup>5</sup> jobbers will have to deliver fuel for free or jobber served stations (primarily neighbor island service stations) will suffer gasoline supply shortages. A more likely scenario is that the jobbers will be put out of business and the stations they serve will not have gasoline.

Given the overwhelming evidence that implementing gasoline price caps will adversely affect consumers and the inability to establish workable zone price adjustments

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the Commission has acknowledged that it is not prepared or capable of addressing and curing any shortfall of gasoline should this contingency occur. *See* Shell Position Statement at pp. 50 – 51.

<sup>5</sup> *See supra*, Section II, D., 1.

to prevent this, the Commission must admit that it cannot implement zone price adjustments until all the mandatory task force requirements of Act 242 are met.

The only reasonable interpretation and construction of Act 242 is that Section 7 requires a legislative task force to address the impacts to neighbor island residents, *before* the gasoline price cap can be implemented. As the agency responsible for carrying out and implementing Act 242/Haw. Rev. Stat. Chapter 486H, the Commission should not jump the gun and implement gasoline price caps before the legislature has a chance to correct the zone adjustment problems through the mandatory task force.

Accordingly, the PUC must refuse to implement any gasoline price caps until all the requirements of Act 242 are met and the risks to the neighbor island residents are properly addressed.

3. **Order No. 21952 Seemingly Ignores The Significant Threat To Supply And The Major Adverse Impact On The Economy, Public Order, Or The Health, Welfare, Or Safety Of The People Of Hawaii**

When dealing with issues to take place in the future, rarely does one have the benefit of looking into a crystal ball to see what will actually occur in the future. But remarkably, that is what has transpired over the past 18 days.

The recent gas shortage on the island of Molokai has demonstrated how fragile the neighbor island petroleum markets really are.<sup>6</sup> This gas shortage provided an example of the difficult and dangerous situations that will occur during gas shortages. As noted in published reports:

Rumors that Molokai service stations were running out of gas turned the Friendly Isle into the Frantic Isle Thursday

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<sup>6</sup> Due to the recent nature of this event, Shell requests that the PUC take judicial notice of the Molokai gas shortage pursuant to HAR § 6-61-48 and HRS § 91-10 (4). See *supra* footnote 3.

[July 28, 2005] with *mile-long lines* at the pumps and attendants too busy to even talk on the phone. Ironically, *the panic* probably will leave Molokai without gas later today [Friday July 29, 2005] with nothing available until sometime Saturday, when the barge with the next shipment arrives.

\* \* \* \*

"I never thought I'd see a day like today," said Rawlins [Shirley Rawlins, owner of Rawlins Chevron Service]. "*The last time something happened like this was back in the '70s.*"

Rawlins said she had to *limit customers to \$100 worth of gas* as they filled their tanks to capacity and brought trunk loads of gas cans so they had a stash.

"People are taking more than they should," she said. "Instead of getting \$20 worth, they're filling up and bringing containers. I was telling them to be careful with so much gas in the cans, *that's dangerous to keep at home.* It's really interesting when that panic button hits."

\* \* \* \*

Rawlins said she learned of the situation Thursday morning when Island Petroleum officials told her they were nearly out of gas and would be dropping off the rest of the supply to the stations.

"We were low already," said Rawlins. "*I kept it to myself, told my workers and then called my emergency vehicle accounts* because I knew they have to have gas. But then I guess word got out and it was like boom!"

By noon, *the lines had started and soon grew to more than a mile in either direction* from Rawlins' business, *causing chaos in downtown Kaunakakai* and along the main highway headed toward the west end.

Valerie, Monson, *Gas panic on Molokai pumps up sales*, Maui News, July 29, 2005

(emphasis added);<sup>7</sup> Further, as reported by the KHON news on July 28, 2005:

*It was a panic on Molokai* where it seemed nearly all of the island's seven-thousand-plus residents tried to fill up on gasoline today.

It started with a *rumored shortage that then created an actual shortage.*

*On an island with a fairly small population, it's easy to run out of things until the next barge shows up.*

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<sup>7</sup> [http://www.mauinews.com/print\\_version.aspx?id=10987](http://www.mauinews.com/print_version.aspx?id=10987)



So with no barge today, residents got worried and created some long lines. At one point it *took more than an hour just to get to a gas pump.*

*From tourists to locals,* they were all getting their fill as the rumors continued to spread across this small community.

\* \* \* \*

"We're tourists and we have three or four days and we need to fill up to see the rest of the island," says a visitor to the islands.

"They got lines backed up all over this place and I tell you, man -- *seemed like two miles already -- two miles,*" says another that is waiting.

\* \* \* \*

Gas prices are already at three-dollars-plus a gallon.

*Some residents also need the gasoline to run their generators at home.*

Kirk Fernandes, Molokai experiences gasoline shortage, KHON.com July 28, 2005;<sup>8</sup> *see also* Associated Press, Molokai residents frenzied over gas: A rumored shortage prompts them to the pumps in a panic, Star Bulletin July 30, 2005;<sup>9</sup> Associated Press, Barge delay fuels fear of gas shortage, Honolulu Advertiser, Saturday July 30, 2005.<sup>10</sup> The various articles regarding the Potential Increases In Gasoline Prices and the Molokai gas shortage are attached hereto and incorporated herein as Exhibit A.

Thus, due to a simple rumor, Molokai experienced actual gasoline shortages with: (1) mile-long lines; (2) waits of more than an hour; (3) tourists inconvenienced by long lines to get gasoline; (4) rationing of gasoline; (5) chaos in downtown and the main highway as a result of the long-lines; (6) dangerous situations of people filling and storing containers of gasoline; and (7) concerns in supplying emergency vehicles.

Under Order 21952, the Commission has not addressed the problem of neighbor island gas shortages. Order 21952 raises the "zone" cap number to allow for the "highest

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<sup>8</sup> <http://khon.com/khon/print.cfm?sid=1152&storyID=5903>

<sup>9</sup> <http://www.starbulletin.com/2005/07/30/news/story7.html>

<sup>10</sup> <http://the.honoluluadvertiser.com/article/2005/Jul/30/ln/507300343.html/?print=on>

actual transportation costs” in an “attempt to minimize adverse supply impacts to rural areas”. The Commission apparently concedes that this “attempt” is the best it can do within the constraints of Haw. Rev. Stat. Chapter 486. However, as explained above, this “attempt” fails because there are no assurances that any of this zone cap adjustment amount will be provided to jobbers. Assuming gasoline marketers price to the cap,<sup>11</sup> jobbers will have to deliver fuel for free or jobber served stations (primarily neighbor island service stations) will suffer gasoline supply shortages. A more likely scenario is that the jobbers will be put out of business and the stations they serve will not have gasoline.

### III. CONCLUSIONS


Based on the foregoing, Shell respectfully requests that:

1. The Commission vacate Order 21952 in its entirety because it is not supported by “reasonably clear” findings of fact and is not supported by the evidentiary record in this case;
2. The Commission refuse to implement Act 242 unless and until the mandatory task force is convened and/or the legislature otherwise takes the necessary and appropriate steps to address the “high probability of service station closures” and “higher risk that remote locations might lose service;” and
3. The Commission make a recommendation to the Governor that she invoke her emergency powers to suspend part or all of the implementation of Haw. Rev. Stat. Chapter 486H.

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<sup>11</sup> See *supra* Section II, D., 1.

DATED: Honolulu, Hawaii August 15, 2005

  
CLIFFORD K. HIGA  
BRUCE NAKAMURA  
KENNETH M. NAKASONE  
Attorneys for SHELL OIL COMPANY

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

----- In the Matter of -----	)	
	)	
PUBLIC UTILITIES COMMISSION	)	DOCKET NO. 05-0002
	)	
Instituting a Proceeding to Investigate the	)	
Issues and Requirements Raised by, and	)	
Contained in, Hawaii Revised Statutes	)	
486H, as Amended	)	
_____	)	

DECLARATION OF COUNSEL

I, BRUCE NAKAMURA declare as follows:

1. I am an attorney licensed to practice law before all courts of the State of Hawaii and am one of the attorneys representing SHELL OIL COMPANY in the referenced matter.
2. Unless otherwise indicated, I make this declaration upon my personal knowledge and belief.
3. Attached hereto as Exhibit A are true and correct copies of the various newspaper articles regarding the potential increase in gasoline prices and the Molokai gas shortage cited to and mentioned in the attached Memorandum in Support of Motion for Reconsideration.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 15<sup>th</sup> day of August, 2005, at Honolulu, Hawaii.



\_\_\_\_\_  
BRUCE NAKAMURA



HAWAII'S NEWS CHANNEL

KHON BROADCAST CENTER • 88 Piikoi Street • Honolulu, HI 96814  
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Posted: July 28, 2005 10:09 PM

## Molokai experiences gasoline shortage

Kirk Fernandes

It was a panic on Molokai where it seemed nearly all of the island's seven-thousand-plus residents tried to fill up on gasoline today.

It started with a rumored shortage that then created an actual shortage.

On an island with a fairly small population, it's easy to run out of things until the next barge shows up.

So with no barge today, residents got worried and created some long lines. At one point it took more than an hour just to get to a gas pump.

From tourists to locals, they were all getting their fill as the rumors continued to spread across this small community.

"We're gonna go with the overreaction and fill my cans up. You know, I just have to do what I gotta do," says one person waiting in line.

"We're tourists and we have three or four days and we need to fill up to see the rest of the island," says a visitor to the islands.

"They got lines backed up all over this place and I tell you, man -- seemed like two miles already - two miles," says another that is waiting.

The owner of a Chevron station says there was already word that gasoline supplies were low on the island. She got her last shipment this morning before what will now be a Saturday barge arrival. The run, however, may have pumps empty by Friday.

"Everyone on the island has been coming in to put gas and trying to (put) more than they should," says the owner. "I'm sure we're gonna have a lot of supply by Saturday as promised by the people at the plant."

Gas prices are already at three-dollars-plus a gallon.

Some residents also need the gasoline to run their generators at home.

Many laughed this all off, but others were on edge--the last thing you expect on Hawaii's friendliest isle.

Exhibit A

"This is the first time I hear horns going off so crazy -- stressing out, yeah?" says a person waiting to fill up.

There were others who got caught in line on a regular fill-up and had no idea what the big deal was -- but in true Molokai style they just went with the flow and didn't complain about it.

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## Gas panic on Molokai pumps up sales

By VALERIE MONSON, Staff Writer

Friday, July 29, 2005 12:16 PM

KAUNAKAKAI – Rumors that Molokai service stations were running out of gas turned the Friendly Isle into the Frantic Isle Thursday with mile-long lines at the pumps and attendants too busy to even talk on the phone.

Ironically, the panic probably will leave Molokai without gas later today with nothing available until sometime Saturday, when the barge with the next shipment arrives. An Island Petroleum official said there would have been enough fuel to meet Molokai's needs under ordinary circumstances. But because the rumor mill went into overdrive, there was gridlock at the island's three stations.

"People are getting crazy," said Frank Keoho, manager of Island Petroleum, which distributes gas on Molokai. "They're standing in line and topping off their tanks. It's the same way as when they say there's a hurricane coming and everything flies off the shelves."

Shirley Rawlins, owner of Rawlins Chevron Service at the entrance to Kaunakakai, finally was able to catch her breath around 5 p.m. after a whirlwind afternoon.

"I never thought I'd see a day like today," said Rawlins. "The last time something happened like this was back in the '70s."

Rawlins said she had to limit customers to \$100 worth of gas as they filled their tanks to capacity and brought trunk loads of gas cans so they had a stash.

"People are taking more than they should," she said. "Instead of getting \$20 worth, they're filling up and bringing containers. I was telling them to be careful with so much gas in the cans, that's dangerous to keep at home. It's really interesting when that panic button hits."

A combination of things led to the scare. Keoho said his company found itself running short of gas, but that wouldn't have necessarily set off an alarm because a fuel barge was on the way to Molokai. The barge, however, was fully loaded from Oahu so the vessel's draft was too deep to safely enter the Kaunakakai harbor and it couldn't dock Thursday. It continued on to Hilo and, after making deliveries there and on Maui, the crew planned to return to Molokai Saturday afternoon, when it will be riding high enough to get into the wharf and refuel the island.

But the coconut wireless quickly caught fire.

"There were rumors going around that we were going to be out of gas for a week or a month and people panicked," said Keoho.

Rawlins said she learned of the situation Thursday morning when Island Petroleum officials told

her they were nearly out of gas and would be dropping off the rest of the supply to the stations.

"We were low already," said Rawlins. "I kept it to myself, told my workers and then called my emergency vehicle accounts because I knew they have to have gas. But then I guess word got out and it was like boom!"

By noon, the lines had started and soon grew to more than a mile in either direction from Rawlins' business, causing chaos in downtown Kaunakakai and along the main highway headed toward the west end.

"I had four people out on the pump island directing traffic," said Rawlins. "The lines were so long a policeman came here and said, 'What are you going to do about this?' and I didn't know what I could do."

For the entire afternoon, the run continued.

"Even people who didn't know what was going on would drive by and see what was happening and they'd turn around and join the line," said Rawlins.

Although frantic, motorists remained mostly friendly.

"People waited patiently," she said. "They weren't upset. They were just saying they had to top off their tanks."

Rawlins said she's not sure if she'll have enough gas to make it through Saturday. She said Friday is usually the station's busiest day, but because of all the sales on Thursday, everyone might have already filled up.

There were no answers to calls at the other stations on the island – Kalama Service down the street from Rawlins and Maunaloa Gas Station on the West End.

Keoho said he thinks the shortage was caused from a busy month of graduation parties and other events on Molokai, but Rawlins said she didn't notice any spike in business.

Once the barge arrives Saturday afternoon, Island Petroleum workers will be refilling the stations so no one should have an excuse to miss church on Sunday morning.

Rawlins, however, still has her fingers crossed.

"Sometimes the barge can't get in and has to turn around," she said cautiously. "So hopefully everything will go OK."

■ Valerie Monson can be reached at [vmonson@mauinews.com](mailto:vmonson@mauinews.com).

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Saturday, July 30, 2005

## Molokai residents frenzied over gas

**A rumored shortage prompts  
them to the pumps in a panic**

Associated Press

KAUNAKAKAI, Molokai » Rumors of an islandwide gas shortage kept Molokai residents rushing to the pumps yesterday for the second consecutive day.

Lori-Lei Rawlins-Crivello of Rawlins Chevron Service said early last night that the station had enough gas to get to its 9 p.m. closing time, but she did not know if the station's tanks would run dry before more gas was delivered this afternoon.

Although signs were posted at the station's entrance to let people know more gas would arrive today, a steady stream of worried customers still waited to fill up their cars and gas cans, she said.

"We are pretty low," she said.

The day before, Rawlins Chevron owner Shirley Rawlins had to limit customers to \$100 worth of gas as they topped off their tanks and loaded gas cans.

"People are bringing more than they should," she said. "Instead of getting \$20 worth, they're filling up and bringing containers. I was telling them to be careful with so much gas in the cans; that's dangerous to keep at home. It's really interesting when the panic button hits."

Rumors about the gas shortage spread Thursday when officials with

the island's main fuel distributor, Island Petroleum, learned that the arrival of a refueling barge would be delayed by a day.

The barge was unable to dock at Kaunakakai Harbor on Thursday because it was loaded down and floating too low.

The barge, which instead went on to Hilo and Maui, is scheduled to dock in Kaunakakai this afternoon after lightening its load.

Island Petroleum manager Frank Keoho said once the rumor started, it spread quickly.

"There were rumors going around that we were going to be out of gas for a week or a month, and people panicked," he said.



Posted on: Saturday, July 30, 2005

## Barge delay fuels fear of gas shortage

Associated Press

- ADVERTISEMENT -

KAUNAKAKAI, Moloka'i — A gas station on Moloka'i prepared to run out of fuel as rumors of an islandwide gas shortage kept residents rushing to the pumps yesterday for the second day.

Lori-Lei Rawlins-Crivello, of Rawlins Chevron Service, said yesterday the station had enough gas until its 9 p.m. closing time, but she didn't know if the tanks would run dry before more gas was delivered this afternoon.

Although signs were posted to let people know more gas would arrive today, a steady stream of customers waited to fill up their cars and gas cans.

"We are pretty low," she said.

The day before, Rawlins Chevron owner Shirley Rawlins had to limit customers to \$100 worth of gas as they topped off their tanks and loaded gas cans.

"People are bringing more than they should," she said.

"I was telling them to be careful with so much gas in the cans, that's dangerous to keep at home. It's really interesting when the panic button hits."

Rumors spread Thursday when officials with the island's main distributor, Island Petroleum, learned that the arrival of a refueling barge would be delayed.

The barge was unable to dock at Kaunakakai Harbor on Thursday because it was loaded down and riding too low in the water. The barge, which went on to Hilo and Maui, is scheduled to dock in Kaunakakai this afternoon after lightening its load.

Island Petroleum manager Frank Keoho said once the rumor started, it spread quickly. "There were rumors going around that we were going to be out of gas for a week or a month and people panicked."

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Friday, August 12, 2005

# Gas cap could boost prices

**A Star-Bulletin analysis shows  
the new law will bring only  
slight changes for isle drivers**

Per-gallon price has hidden costs

By B.J. Reyes  
[bjreyes@starbulletin.com](mailto:bjreyes@starbulletin.com)

Prices at the pump are unlikely to change dramatically and could climb a few cents on some islands under gasoline price controls scheduled to take effect Sept. 1, according to a Star-Bulletin analysis.

Under the cap's pricing formula, the cost of regular, self-serve unleaded was estimated at about \$2.65 a gallon on Oahu, based on market conditions last week. That is about 4 cents higher than the average reported yesterday in Honolulu by AAA's Fuel Gauge Report.

On Maui, prices under the so-called "gas cap" would be about 9 cents cheaper than the \$2.90 a gallon reported by AAA yesterday in Wailuku, but roughly 2 cents higher than the auto club's listing of \$2.70 a gallon in Hilo, according to the analysis.

Frank Young, a member of the consumer group Citizens Against Gasoline Price Gouging who helped push the price cap through the Legislature, said he expects retail prices to be about \$2.75 a gallon for Oahu after Sept. 1. But he noted that gas prices nationwide have increased as much as 14 cents a gallon in the past two weeks and are likely to go up again by Aug. 24, when the state Public Utilities Commission is scheduled to publish the first list of price caps.

"To make a comparison to say it (the cap) would make prices higher is kind of unfair," he said. "They (gas prices) are going up everywhere. They're going to be what they would have been regardless of the cap."

The cap is tied to an average of spot prices for wholesale gas in Los Angeles, New York and the U.S. Gulf Coast as determined by the Oil Price Information Service, or OPIS, a New Jersey-based organization that bills

## At the pump

How the price of regular, self-serve unleaded gasoline could be affected by the state's gasoline price cap law.

### Under the law

» \$2.65 in Honolulu, \$2.81 in Wailuku, \$2.72 in Hilo

### Currently

» \$2.61 in Honolulu, \$2.90 in Wailuku, \$2.70 in Hilo

Sources: AAA Fuel Gauge Report, Star-Bulletin analysis

itself as "the most widely accepted fuel price benchmark for supply contracts and competitive positioning."

Because the benchmark listings are property of OPIS, the PUC has said it cannot release which of the service's numerous indexes are being used to set the price cap.

The Star-Bulletin analysis used a baseline price of \$1.77 a gallon, based on an average of daily spot barge and pipeline prices for conventional unleaded gasoline in the three key markets as listed in the weekly newsletter sent to OPIS subscribers. The newsletter, with prices from July 29 through Aug. 4, was provided to the Star-Bulletin by OPIS. It is unknown if these same benchmarks are being used by the PUC.

The Star-Bulletin's price estimates do not include any potential markups that retailers may charge. The law sets no limit on retail prices, but supporters say they believe lower wholesale costs will allow dealers to pass savings along to consumers.

Critics say gas stations are likely to charge the maximum possible while adjusting to the new regulations.

The law gives the PUC authority to adjust the price caps as it sees necessary to bring prices in line with market conditions. It also has a provision stating the governor can suspend the caps if they cause economic hardship.

Gov. Linda Lingle has said she does not believe the law will bring down prices, but she plans to let it take effect as scheduled.

In letters last month to Lingle and Democratic leaders in the Legislature, PUC officials warned of potential pitfalls from the cap, including the potential for higher prices and the possibility of shortages resulting from some suppliers leaving the market.

Lingle said she would sign legislation to delay the cap if lawmakers were to come back in special session to pass such a bill.

House Speaker Calvin Say said yesterday that Democrats do not plan to pursue a special session. The gas cap was among the topics House Democrats discussed in caucus yesterday.

An analysis of the cap prepared for caucus members estimated the price of regular unleaded gasoline on Honolulu would be about \$2.48 a gallon without any dealer markups. That cost also does not include the 4 percent general excise tax, which would be about 8 cents.

The House analysis used a baseline price of \$1.68 as determined by the U.S. Department of Energy for the period of July 25 through 29.

#### BACK TO TOP

### **Per-gallon price has hidden costs**

A look at what goes into the cost of a gallon of regular, unleaded gasoline on Oahu under the state's price cap law:

- » \$1.77: Baseline wholesale price as determined by an average of spot prices in New York, Los Angeles and the U.S. Gulf Coast.
- » 4 cents: Location adjustment factor to account for costs stemming from Hawaii's remote location.
- » 18 cents: Marketing margin factor to account for operational costs of producing

gasoline.

» 6.5 cents: Zone price adjustment to account for cost of distributing gasoline. This fee is greater for neighbor islands, ranging from 13.6 cents on Kauai to 40.3 cents on Lanai.

» 50.9 cents: State, federal and county taxes. (County taxes vary.)

» 8.2 cents: General excise tax.

Sources: State Public Utilities Commission, Oil Price Information Service, Star-Bulletin analysis

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Posted on: Sunday, August 14, 2005

## Hawai'i gas cap may drive prices up

By Sean Hao  
Advertiser Staff Writer

- ADVERTISEMENT -

The average retail price for regular unleaded gasoline in Honolulu could jump as much as 21 cents above current prices to \$2.82 a gallon when Hawai'i's gasoline price cap takes effect Sept. 1.

Legislators enacted the gas cap to rein in the high prices Hawai'i drivers pay for fuel. But because of a recent rise in Mainland prices — on which the gas cap is based — the law could have the opposite effect, at least temporarily.

No one can say for sure what gasoline prices will be come Sept. 1. For prices to rise 21 cents a gallon, three things would have to happen:

- Prices on the Mainland would have to stay where they are now or increase.
- Hawai'i gasoline wholesalers would have to charge the maximum allowed under the price cap.
- Retailers would have to maintain about the same 12-cent- per-gallon markup they now add.

The key to understanding the gasoline price cap is to remember that it is a cap on wholesale prices. The state's major wholesalers, Chevron Corp. and Tesoro Petroleum Corp., are not saying what they plan to do after Sept. 1.

If the gas cap took effect this week, the maximum wholesale price would be set at about \$2.70 a gallon, based on Advertiser calculations. That's an estimated 21 cents per gallon more than the wholesale price last week. So if wholesalers decide to price at the maximum, they would have to raise their rates by 21 cents. And if retailers pass that 21 cents on to consumers, the gas cap could push prices even higher.

State and county officials are hoping the possibility of higher prices will not lead to a run on gasoline. At the same time, they are working on plans to cope with a spike in demand. The plans could include measures ranging from telling the public not to change gasoline buying habits to setting aside reserves for public safety vehicles.

"All we want to do is be prepared, be cautious (and) be prudent," said Ted Liu, director for the

Department of Business, Economic Development and Tourism. "Obviously, we think education is important. How and when and what we say is something we're looking at now.

"We don't want (a run on gasoline) to be a self-fulfilling prophecy."

Whether prices spike under the gas cap depends primarily on wholesalers, who may decide to raise prices to the maximum allowed by law to offset potential losses if the cap eventually forces prices lower. A drop in Mainland prices would lead to a corresponding drop in the gas cap, and that would compel wholesalers to price at levels below what they are used to.

"I can't think of a reason why a profit-maximizing producer or distributor would not charge the highest regulated price," said Paul Brewbaker, Bank of Hawaii chief economist. "I would. You (the state) gave me an excuse to charge that price."

David Hackett, president of Stillwater Associates, which has produced a report critical of gasoline price caps, said there's precedent for such pricing. Oil companies operating in areas in Canada that regulate gasoline prices, such as Newfoundland and Prince Edward Island, typically set price at maximum levels allowed by law, he said.

"How fast are they going to do it (in Hawai'i)? I don't know, but it will happen," Hackett said.

If wholesale prices rise, dealers will have no choice but to pass the increase on to consumers, said Bill Green, a former owner and now consultant to the Kahala Shell gasoline station.

"There's no room for dealers to eat that (loss)," he said. "I think dealers would continue to take the same margin they have now."

Not all analysts expect wholesalers to price at the maximum.

John Felmy, chief economist for the trade group American Petroleum Institute, said market forces could keep wholesale prices in check. "It's not clear to me that they have the market power (to set prices to the maximum allowed by law)," he said.

If prices rise too high, the law allows the Public Utilities Commission to adjust the formula to bring the gas cap ceiling down.

There's also the chance a legal challenge could forestall the caps, though that seems unlikely.

"The Supreme Court has upheld wage and price controls," state Attorney General Mark Bennett said. "So I would be hard-pressed to see a successful legal challenge."

Gov. Linda Lingle could suspend the caps if there's a major adverse impact on the economy, public welfare, or the health and safety of people.

State officials are already concerned that consumers could react to price caps by filling their tanks more frequently, or by hoarding gasoline — developments that would strain the state's gasoline distribution system and potentially create shortages.



"It is a fragile system," said API's Felmy. "Even little runs (on gasoline) could upset things."

The potential for higher prices and supply shortages were key arguments against the state law passed last year. Lawmakers intended for the gas cap — which applies to all grades of gasoline — to force Hawai'i prices to react more closely to changes in crude oil while ultimately lowering prices for consumers.

On the Mainland, competition tends to force prices down when crude oil prices fall. In Hawai'i, prices react less often to changes in crude oil costs.

The price cap was intended to change that by preventing O'ahu wholesalers from charging more than 28.5 cents above the five-day average spot price for regular gasoline sold in Los Angeles, on the Gulf Coast and in New York during a preceding one-week period. The law also provides for an added adjustment for Neighbor Island sales.

Hawai'i's relatively high gasoline prices have been attributed to, among other things, the high costs for land and labor and the nation's highest gasoline taxes. Other industry practices such as the export of excess gasoline also support high retail prices.

Price-cap proponents, including legislators and consumer groups, contend the price-cap law will save consumers money in the long term. Meanwhile, oil industry officials and economists contend that forcing gasoline prices down could cause oil companies to shut down or consolidate, which would lower competition.

Attrition in the oil industry could occur over a longer period.

One thing both proponents and opponents of the gas cap acknowledge is we are heading into the unknown.

"Nobody knows what the public reaction will be," said Frank Young, a member of consumer advocacy group Citizens Against Gasoline Price Gouging and a price-cap proponent. "Nobody knows what the oil companies might do. The thing has to run its course."

Albert Chee, a spokesman for Chevron, added: "We don't know what to expect. Nobody can truly know what will happen."

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Sunday, August 14, 2005

# Analyst skeptical of Hawaii gas cap

## The oil economist says a rumor could create a fuel shortage

By Rod Antone and B.J. Reyes  
[rantone@starbulletin.com](mailto:rantone@starbulletin.com) [bireyes@starbulletin.com](mailto:bireyes@starbulletin.com)

An oil industry economist warns that having a gas cap in Hawaii is potentially as bad as some make it out to be.

John Felmy, an economist and director of the Washington, D.C.-based American Petroleum Institute, said depending on how people react, it could lead to a situation such as Molokai had recently.

"Everybody lined up because of a rumor and it created a shortage," he said. "The existence of this legislation is a bit uneasy. In terms of consumers ... all you need is some deejay reporting that there's a problem and it becomes one, really."

The "gas cap" is scheduled to take effect Sept. 1.

If it were in place today, regular, unleaded gasoline would increase to about \$2.72 per gallon, according to a Star-Bulletin analysis of Public Utilities Commission figures.

Depending on where you buy your gas on Oahu, that price could be anywhere from 6 to 20 cents per gallon higher than what you pay now. But while gas cap supporters tout those prices will go down once mainland prices go down, those paying at the pump are somewhat wary about whether the cap will mean much in the long run.

"Personally, I don't think the gas cap will do much of anything," said Hawaii Kai resident Dave Heywood, whose Mini Cooper sucked up \$35 of super unleaded gasoline at the Cooke Street Tesoro yesterday.

"If they fix our roads we'd save a lot more gas.

"I know I burn a lot just sitting in rush-hour traffic."

Supporters say the law should be given a chance to work and note that

the PUC has the ability to adjust the price caps if necessary. The law also gives the governor power to suspend the caps if they are found to cause economic hardship.

"It's a fair law," said House Speaker Calvin Say.

In preparation for the first price caps, which are to be posted Aug. 24, the PUC provided preliminary calculations to the oil industry.

The baseline for the cap is calculated using the average of spot prices for wholesale gas in Los Angeles, New York and the U.S. Gulf Coast as set by the Oil Price Information Service. Various charges are then added to the baseline price to account for oil companies' operating costs in Hawaii. That then becomes the maximum pre-tax price at which gasoline can be sold at wholesale in Hawaii.

Using OPIS market figures from Aug. 3-9, the PUC calculated the price cap for regular unleaded gas on Oahu at \$2.12 per gallon. The baseline is higher for neighbor islands because added costs for shipping and storage are factored in.

After factoring in taxes, the pump price was estimated by the Star-Bulletin to be \$2.72 a gallon on Oahu. That is about 11 cents higher than the average reported yesterday in Honolulu by AAA's Fuel Gauge Report.

On Maui, prices would be about \$2.88 a gallon, compared with \$2.91 a gallon reported by AAA in Wailuku. In Hilo, prices are estimated at \$2.79 a gallon, compared with \$2.72 a gallon listed by AAA.

The Star-Bulletin's price estimates do not include any potential markups that retailers may charge. The law sets no limit on retail prices, but supporters say they believe lower wholesale costs will allow dealers to pass savings along to consumers. Critics say gas stations are likely to charge the maximum possible while adjusting to the new regulations.

Manoa resident John Reich said he can not even afford to put in a full tank as it is.

"I put three dollars in three times today," he said. "I used to get 1.9 gallons for five bucks and now I get 1.7 gallons for five bucks.

"I think it's highway robbery."

Waialae resident Cory Haddon is against any increase but is willing to suffer now if it means less suffering later.

"I think gas prices are out of hand to begin with," she said. "But if it will save us from being exploited in the future then do it.

"I think gas went up 5 cents in the last two weeks."

## Gas cap prices

*Below is a list of the projected cost of a gallon of regular unleaded gasoline in various Hawaii markets if the state's gas cap law was in effect today. The prices are the result of a Star-Bulletin analysis of Public Utilities Commission figures. They do not include potential retailer markups.*

ISLAND	PRICE IN DOLLARS
Oahu	\$2.7167
Kauai	\$2.7556
Maui (not Hana)	\$2.8763
Hana	\$2.9595
Molokai	\$2.9886
Lanai	\$3.0832
Hilo	\$2.7936
Kona	\$2.8134

Source: Star-Bulletin analysis of Public Utility Commission figures.

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**Public Utilities Commission**  
[www.hawaii.gov/budget/puc](http://www.hawaii.gov/budget/puc)

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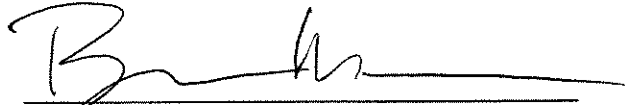
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DATED: Honolulu, Hawaii, August 15, 2005.

A handwritten signature in black ink, appearing to read "Clifford K. Higa", written over a horizontal line.

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